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ABSTRACT

The background of P.L. 94-142, the Education for All Handicapped Children Act, is reviewed, its contents analyzed, and major problems identified. Areas of controversy addressed include provision of such related services as psychotherapy, school health services, summer programs, and vocational education. Expense and ambiguity of the law are among the problems noted. Difficulties with the concept and implementation of mainstreaming are discussed, and the lack of teacher, parent, and student support for the practice is emphasized. Additional problems with P.L. 94-142 identified include discipline for behaviorally disturbed students, restrictions on suspension and expulsion, and difficulties in teacher retention and recruitment for rural areas. The major difficulty is explained to be financial. Inequity, competition between handicapped and nonhandicapped students, and the extreme financial burden of developing individualized education programs are described, as are inadequate congressional appropriations. Alternative financial considerations are suggested. The author concludes that the law raises problems in economics, constitutionality, politics, and philosophy. (CL)

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PL 94-142: Do The Problems Outweigh the Benefits?

by

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April 8, 1983

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PL 94-142
Do The Problems Outweigh the Benefits?

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1. Why PL 94-142 Was Adopted

In 1975, the Congress of the United States found that 750,000 physically, mentally, or emotionally handicapped children living in this country were receiving no education at all. Another 2,200,000 received educational services inadequate to meet their needs.[1] State and federal financial support for special education students were seen as a profitable way for school districts to make money. Handicapped children were separated from regular students and their classes were "dumping grounds" containing an unusually large number of students from ethnic or racial minorities.[2] Congress further found that handicapped children were subject to discrimination, required unusual and creative teaching strategies, did not work well in large groups, needed special facilities, were often seen as discipline problems, were excluded from mandatory attendance laws, and, on the whole, were often misplaced, miseducated, undereducated, or ignored.[3]

Under the 14th Amendment Equal Protection Clause, the state is forbidden from denying any person under its jurisdiction equal protection of the law and this, in turn, is interpreted as educational opportunity which is supposed to be provided at public expense.[4] The due process clause prohibits the state from depriving a person of life, liberty, and property, and the courts have ruled that entitlement to a free public education provision for the handicapped falls under property interest and, furthermore, includes reputation protection and freedom from stigmatization.[5]

In 1954, in Brown vs. Board of Education, the courts overruled the separate but equal status of education and also required nonacademic and extracurricular services and activities to the maximum extent possible to meet the needs of the handicapped.[6]

In 1966, in Title VI Education of Handicapped Children Law, Federal

grants were authorized to initiate and improve educational progress of the handicapped without federal control. In 1968, the Handicapped Children's Early Educational Assistance Act provided federal funds for that specific type of educational activity.[7] Pre-1970 laws were voluntary conditions with the federal government's role being one of assistance and encouragement, not one of mandating or monitoring.

PL 94-142 grew out of efforts of a group of parents (The Pennsylvania Association for Retarded Citizens) to place their mentally retarded children in schools instead of hospitals or settings where no services were provided.[8] In 1971, the Supreme Court ruled that it was"the obligation of the state of Pennslyvania to place each mentally retarded child in a free public program of education and training appropriate to the child's capacity...placement in a regular public school class is preferable to placement in any other type of education and training."[9] In 1972, in the Mills vs. Board of Education case, the court ruled that an individual school district's lack of funds was not an adequate excuse for failing to provide an appropriate education for the handicapped.[10] In 1973, in the Rehabilitation Act, Section 504 imposed controls over the administration of special education programs whenever any federal financial assistance is received, and in 1974, PL 93-380 enacted by Congress saw an enormous increase in federal control over state expenditures of federal money and its administration of special education programs.[11]

The Mathias Amendment to PL 93-380, U.S. Code Section 1413 enjoins that handicapped children be educated with children who are not handicapped but that their education be differentiated by special needs and appropriate services.[12]

2. PL 94-142 Defined

It was the intent of Congress when it passed the Education for all

Handicapped Act of 1975, (PL 94-142) that it would implement and re-inforce the right of handicapped children to an education and would precisely define how this goal would be attained.[13] The law was passed on November 29, 1975 to become effective October 1, 1977, passing the House 404-7 and the Senate 87-7.[14] Basically it maintains that education is a civil right and a free appropriate education must be made available to all handicapped children regardless of severity of handicap from birth through 21 years of age. Each state must establish procedures for the identification and evaluation of all handicapped. This education will be served in the "least restrictive environment." An "Individual Education Plan" (IEP) will be developed for each child and reviewed annually. Requirements will be met for due process, procedural safeguards, multifactored assessment, and nondiscriminatory testing. No student can be labeled and placed without parental participation in decision-making.[15] The term "free and appropriate" public education means that the special education and related services will be provided at public expense, will meet the standards of the state educational agency, and will include appropriate preschool, elementary, and secondary school education, and will be provided in accordance with the individual's educational program.[16]

Stated acceptance of federal money to support special education is not mandatory. If the state does not accept federal funds, it is not bound by PL 94-142.[17] If it does, it is bound to submit a program plan to the U.S. Commissioner of Education written and submitted annually by the state's education agency.[18] Today all states except New Mexico have enabling legislative programs complimentary to PL 94-142.[19]

3. Who Is Included Under the Law

Under PL 94-142, handicapped or disabled children refers to any

child with learning disabilities and/or physical handicaps which make him in need of support services in order to learn.[20] It requires a person to have 1 of 11 enumerated impairments listed in the act. There are nine general categories of which the handicap may range from mild to severe. They are: deaf, hard of hearing, mentally retarded, orthopedically impaired, other health impaired, seriously emotionally disturbed, specific learning disability, speech impaired, and visually handicapped.[21]

In 1980, 4.1 million handicapped students were serviced under this law, an increase of 43% from 1975, the year the law was passed by the federal government.[22]

4. Controversial Related Services-Health Care

One of the most litigious issues evolving from PL 94-142 is Section 3 (c) which states that schools must provide "...a free appropriate public education and related services designed to meet their unique needs." Section 121 a. 13 (a) defines these services as transportation, corrective development, speech pathology, audiology, psychological services, medical services for diagnosis or evaluation, school health services, social work, and parent counseling and training.[23] School health services are thus to be provided but not medical services unless diagnostic or evaluative, but the question is raised, what exactly are school health services? The issue of catheterization has been particularly controversial. The Department of Education has not issued a policy clarification paper on this matter nor does it intend to elaborate, adopting instead, a nonintervention position. Yet, it will continue to pass judgment on what constitutes a related service on an individual basis.[24]

5. Inconsistencies of Court Decisions-Related Services

Before PL 94-142 there were few cases challenging state practices in

handicapped education. Since the law was passed there have been thousands of lawsuits involving the handicapped and due process hearings. The atmosphere of PL 94-142 makes it a prime target for lawsuits and gives parents the right of appeal all the way to the State Board of Education. Parents have tended to hire an attorney instead of mediate.[25] Most of the suits have resulted from the failure of the Office of Education to clarify and interpret the mandates of the law. The Education Advocates Coalition consisting of 13 child and health advocacy groups released a report in April 1980 highly critical of the handicapped program stating;

> The Office of Education has failed to make clear federal policy decisions in a timely fashion thereby fostering confusion and substantially delaying...efforts to obtain needed educational services.[26]

Attorneys must work with a lack of direction from the federal government and a confusing philosophy from the Office of Civil Rights. In Texas, for example, provision for catheterization for controlling bladder functions was ordered, but the 5th U.S. Circuit Court of Appeals overturned this ruling. Schools are in need of finite definitions of what exactly the law does offer.[27]

The irony seems to be that a minority of sophisticated, aggressive parents can get thousands of dollars worth of educational special benefits, but for the average, the system doesn't work. They don't understand the Individual Education Plan or the court hearing procedure.[28]

6. Psychotherapy-Related Services

There are even more legal pitfalls with the psychotherapy issue. The law says that if the state defines it as a psychological service, it must be included as a related service, but if it is defined as a medical service it need not be. Traditionally, mental health agencies assumed responsibility for all services given to the emotionally disturbed or retarded

who are institutionalized. However, the Education Department, in trying to expand PL 94-142, put responsibility for all of this on one agency. They had issued a paper to direct schools to pay for psychotherapy when necessary for a child's educational development but have now backed off and won't deal with it because of the high cost problem. States have differed in their interpretations. Connecticut and Pennslyvania see it as a medical service and refuse to pay for it, while Montana says it is a psychological service under PL 94-142, and schools are ordered to provide it.[29]

7. Summer School-Related Services

Summer school is another problem under the related services to the law. In Armstrong vs. Kline in Pennslyvania, the issue was raised whether the refusal of the schools to provide more than 180 days of school could cause regression in the handicapped over the long summer. The ruling was that 180 days would not be substantial for the seriously handicapped. It is unlawful for a state to limit the school year when it has been determined a child will benefit from a year-round program, but what criteria should be used to determine this? In Illinois, the Peoria School District had 24 due process hearings resulting from the Armstrong decision. A ruling is needed on how it is possible to prove regression for a severely handicapped child, especially on severely or profoundly retarded. Only physical therapy needs year-around therapy, but experts have testified that summer school is recommended if students: 1. have no real self-image, 2. have abusive sexual behavior, 3. need peer contact as much as possible, 4. need year-around residential placement to escape child abuse or are an endangerment to their family members.[30] The National School Board Association estimates it could cost school systems an additional $830 million per year to provide these summer services.[31]

8. Related Services-Vocational Education

The law also includes the provision of vocational education at no cost to the parents, and states are now required to spend at least 10% of the total federal allotment for vocational education of the handicapped and must describe this in the 5-year plan. There must be an interaction between the vocational education department and the IEP team. The handicapped may be placed in a regular vocational educational program with special education assistance or in a specially designed separate program. Because employment among the educable mentally retarded is 21%, and 40% of all disabled adults are employed, the vocational education program is directly related to the preparation for careers other than those which require a degree. The cost of maintaining a person in an institution exceeds a quarter of a million dollars over a lifetime, so vocational education is committed to providing the handicapped with job skills.[32]

As far as the question of related services goes, it does well to look at some financial statistics. In Alaska, $670,000 was spent in 1980. In Texas, travel expenses for getting 10,800 handicapped students to work sites was $2 million. This used to be paid for by rehabilitation agencies.[33] To avoid such fiscal stress, cities must co-ordinate the use of staff resources. Health personnel could be reimbursed with Medicaid revenues for certain support services, such as occupational and physical therapists. Medicaid also provides for the use of off-site centers for related services, which could be schools.[34]

9. "Least Restrictive Environment"

Federal law states that recipients of federal funding assistance shall provide an education to each handicapped person within their jurisdiction with persons not handicapped to the maximum extent. This is referred to as the "least restrictive environment" and the process of placing

the child in this environment is referred to as "mainstreaming."[35] It is the judicial notion because of the due process clause of the 14th Amendment to the Constitution that a regular educational setting is preferable unless this cannot possibly be acheived because of lack of certain supplementary services and aids.[36] Some legal theorists have indicated that a decision to place a handicapped child in any setting other than with his non-handicapped peers is inherently restrictive and thus a deprivation of individual liberty. Each handicapped child's placement will be determined annually based on his individual education plan. It will be as close as possible to the child's home and will be at the school he normally would attend unless his IEP states other alternative arrangements. In selecting the least restrictive environment, consideration must be given to any potentially harmful effect on the child or on the quality of services he will receive.[37]

Particular care must be taken to avoid mislabeling because of inaccurate testing results. Tests cannot be racially or culturally biased. A battery of tests must be used to assess specific areas, not only IQ.[38] Educators agree that public school placement is a realistic preparation of the student for society, but the schools are not organized for this level of service. It is simply not practical. These students need to be taught campus survival skills and desirable student behavior or they end up hanging around nurses' offices. Somehow, "least restrictive" and "appropriate" placement are not always synonymous with best.[39]

10. "Mainstreaming" Court Cases

Parents in ever-increasing numbers are turning to state and federal courts seeking damages for alleged wrongs in classification, placement, or

service for their handicapped child.[40] If they are not satisfied with the free, appropriate education provided they have the right to an impartial due process hearing. To guarantee impartiality the hearing may be conducted by someone not employed by the agency responsible for the education and care of the child. The right to counsel by people with special knowledge or training must be made available. Parents have the right to obtain an independent evaluation by a qualified outside examiner at public expense if the public school's evaluation is deemed inappropriate.[41] PL 94-142 further allows local or state agencies to initiate due process proceedings if the child's parents don't feel the child's best interests are being served, or wishes to change the child's placement. School districts appear to be controlled by federal regulations, on one hand, and parents on the other.[42] But, again, parents who are wealthy are better able to articulate their concerns, and demand evaluations and appeals which increases the disparity between special education students. More than 1,000 hearings were requested and held in Massachusetts in the first three years after PL 94-142 was enacted. Surprisingly, 40% involved parents who were against mainstreaming.[43] If Congress would define what an "appropriate" education is and provide the courts with standards to determine a child's placement, class action suits would diminish.[44] In Doe vs. Griles, $2.825 million was awarded against the Fort Wayne, Indiana school district because 113 profoundly retarded children were not provided an "appropriate" education. They were educated with an unrealistic teacher-pupil ratio (1/28) and little more than babysitting was done.[45]

Even though PL 94-142 seems to lead to a more accurate diagnosis of handicapped children and to more effective programs, it is costly, not only in outright legal costs, but those in administrative time, energy, morale,

and bad feelings. Once such a notion as "educational malpractice" becomes accepted, the courts, which are already behind in their work, will be choked with suits.[46]

11. Prevalent Attitudes Toward "Least Restrictive Environment"

"Mainstreaming" placing of the child in the least restrictive environment is definitely the major issue in PL 94-142. Mainstreaming efforts cannot be successful unless the regular classroom teacher has the skills and attitude necessary to implement it well. Of the handicapping disorders, the results of positive educational environment depend on the severity of the handicap. Teachers will respond to placement more positively if it is less severe.[47] Attitudes are negative because of several reasons. Teachers feel a loss of professional identity when differing from the customary routine. They are committed to the existing program. They lack knowledge or skills for the complexities of mainstreaming. They don't believe in mainstreaming, and they have too many other duties to use the effort required for change.[48] With the profoundly orthopedically handicapped, only 9% of the teachers surveyed felt they could try to implement a program, 30% felt they could with behavior disorders, 50% with hearing disorders, and 27% with visual disorders. Most teachers were at least willing to try to work for a positive educational experience with handicapped children except those who were severely or profoundly mentally retarded. Data indicates 80% of the teachers favored mainstreaming in-services, but only 50-60% were willing to take college courses and only 30-40% were willing to enroll in graduate level courses related to this area. Teachers viewed themselves as technicians who implemented the decisions made by others, and were clearly unprepared for the responsibility of dealing with the handicapped.

They did have a more positive attitude toward the learning disabled, perhaps because that label seems to have less stigmatization.[49]

However, because they don't feel equipped to deal with handicapped children, when they were placed in the classroom, teachers did nothing extraordinary to accomodate them and give them the special instruction they needed.[50] Teachers also expressed bitterness at the amount of time involved in meetings with parents, evaluating progress, determining goals, and performing other clerical activities related to the IEP, and with program inconsistencies, inequitable distribution of funds, and support services. The main criticism seems to be that too much staff time and money are allotted for so few.[51]

12. Recommendations for Successful Mainstreaming

The National Education Association favors mainstreaming only when the following criteria have been met:

1. It provides a favorable learning experience for both the handicapped and regular students.

2. Regular and special education teachers have been prepared for the role.

3. Appropriate instructional materials, support services, and pupil personnel services are provided for the teacher and handicapped student.

4. Modifications have been made in class size, schedules, and curriculum to accomodate shift in demands.

5. The program's development is systematically evaluated and reported.

6. Adequate additional funds and resources are provided for mainstreaming.[52]

Some suggestions for additudinal changes are an open line of comm-

unication in meetings, a creation of an ownership in the program's changes, retraining, creating overload pay, stipends for summer development, and the participation in a national support network.[53] If teachers must teach like a special education teacher, then they should be paid more.[54] They should also get assistance immediately with no "loss of face" in crises with mainstreamed students.[53]

13. Mainstreaming Results

For all of the turmoil mainstreaming seems to be causing with teachers, parents, and students, the question remains, is it working? by 1977-78, 68% of all handicapped children were spending the whole school day or part of the day in regular classrooms, 25% were in separate classrooms on regular educational campuses, and 90% of all handicapped children were receiving at least some of their education in the mainstream.[56] Students being mainstreamed are 4, 5, and 6 years below their regular classmates so there is a high chance of mainstreaming failure.[57] Special students are identified for vocational and occupational training in the "life-skill" courses and are better classified as trained than educated. Especially at the secondary level where teachers are traditionally content, not student oriented, individualized instructional needs are not met.[58] There are contradictions. Despite access to the same building, there is a "separation through stratification" of educational programs which insures differentiation in key areas of the student's school experiences. Tracks of inferior educational status has harmful effects on student identity, expectations, and performance. Despite the increased physical proximity of mainstreaming, the real sources of student identity are left untouched. The equality of access is bound by the hierarchal social structure providing experiences that structure individuals for their appropriate social and economic roles in

life.[59] Emphasis has been on administrational arrangements more than on instructional or curricular matters.

Research as far as social interaction has yielded mixed results. Some have found that contact between the handicapped and non-handicapped does not increase social acceptance and in some instances results in prejudice and rejection. Research shows that the handicapped are frequently rejected due to personal or behavioral characteristics and not the handicap itself.[60] Social skills are rarely included in the curriculum and social-affective growth must take place if mainstreaming is to benefit the child's adjustment to society.

Three studies to assess the effectiveness or ineffectiveness of mainstreaming as far as psychological support and social effect on educable mentally retarded and learning disabled children were done. It was found that transition from self-contained to integrated settings resulted in loss of psychological support systems from peers and teachers. This loss may be influential in the increase of introversion. Mainstreaming appears to be least effective in promoting positive behavior. Selected academic placement in segregated settings appears to be the most effective in development of positive behavior.[61] Mainstreaming success is further harmed by the loss of patience on the part of the teacher, which creates a negative effect on the handicapped child and on the other children. Handicapped children developed shy, reticent behavior and personal relationships tightened up because of taking care not to offend.[62] The development of an individualized, personalized relationship between teacher and student cannot be done because of overcrowding which promotes easy anonymity and shallow teacher-pupil contacts.[63]

Studies show that no significant difference in academic achievement

resulted as a function of integration or segregated placement.[64] With care and the best teachers working with mainstreaming it could be a considerable help to the handicapped child, but without, it could end up being the most, instead of the least restrictive environment for children.[65] It seems to be a philosophical concept based upon legal and social values but with little practical value.

14. Discipline Problems, Behaviorally Disturbed Students

Another problem resulting from PL 94-142 is in the area of disciplinary measures allowable toward handicapped children, both those mainstreamed and those in special classes on the regular campus. Emotionally disturbed youngsters tend to exhibit the following characteristics: inability to learn which is not explained by intellectual, sensory, or health factors, inability to build and maintain satisfactory interpersonal relationships, inappropriate behavior, feelings of being below normal, general moods of depression and unhappiness, and development of physical symptoms of pain and fears associated with personal or school problems. Teachers, most naturally, emphasize the mainstreamed pupil conform to the standards of the regular environment. Time is lost in dealing with difficult behavior resulting from instruction appropriate to the regular student, but not to the handicapped. Sometimes the situation deteriorates to the point of causing regular education students to be removed from the class as in the case of 6-year-old Brooke Bennett, whose room was continuously disturbed by a hyperactive handicapped classmate, and whose mother consequently placed him in a private school. Pages and pages of advice and guidelines are available to teachers and administrators about handling behavior problems occurring with mainstreaming, in fact, more philosophy and suggestions

have been written for one child than the rest of the class would receive in 12 years of education, but teachers rarely find time to familiarize themselves with them.[66]

15. Suspension and Expulsion Restrictions

Another unexpected side effect of PL 94-142 is that it supplants the disciplinary procedures of local school districts in the areas of suspension and expulsion. Conflict arises between the traditional power to suspend and expel and the handicapped's right to an "appropriate" education. In the Connecticut case of Stuart vs. Nappi in 1978, it was ruled that suspension and expulsion go beyond acceptable limits of discipline because the handicapped child is denied access to his IEP within the school program.[67] Changes in the IEP placement brought about by expulsion don't comply with the procedural safeguards of PL 94-142. Courts seem to view disruptive behavior as a strong indication that the educational placement of a child is not appropriate.[68] The issue is particularly confusing because the rights of due process guaranteed to all students conflict with the special procedures of PL 94-142 that must accompany the handicapped child in his placement.[69] A handicapped student cannot be deprived of his educational program for more than two days. He may not have his program changed without rigid adherence to prescribed procedures. He may not be refused public school services unless appropriate private placement is provided at the school district's expense because he has the right to an appropriate public education. The only time a handicapped student may be even temporarily deprived of his IEP is when he endangers the health, safety and welfare of the balance of the student body.[70] Temporary suspension may be appropriate for disruptive behavior, but PL 94-142 does not permit

a change in class placement. Only a professional team as called for in the law can do that, and the procedure is unquestionably slow.[71] The school district must determine whether a relationship exists between the student's behavior and his handicap, a decision only experts are able to make, not school boards.[72]

States polled on their position on suspension and expulsion indicated mixed results and responses. Some examples are, Arizona, who encourages behavior modification, Kansas asks for rulings from the Department of Education, North Carolina provides services if suspension is more than 10 days, Nevada allows short term suspension if others are endangered, Oklahoma urges careful documentation, and the District of Columbia allows no suspension and expulsion. It would appear that school districts' best option is to forgo suspension and expulsion for the handicapped and implement steps needed to accomplish a program change. In this instance, parents must be notified of a placement change and must have the opportunity for appeal. If the parent disagrees with expulsion, it won't be accomplished, and it is not likely the parent will agree. If the parent does agree with a program change, he may always claim not to have understood, withdraw permission, and force the school district to begin over.[73] The Department of Education as on so many other issues related to PL 94-142, refuses to tackle the problem of disciplining the handicapped in general, and instead has chosen to raise the issue of whether such students should be expelled or suspended because of a large number of conflicting court decisions.[74]

16. Disciplinary Alternative Programs

Alternative programs for discipline suggested are similar to those being tried on regular students. They include a time-out program, an alter-

native behavior modification program, a half-way program between special education and mainstreaming, a self-contained room with rotating teachers, a work-study program, and a room to avoid confrontation with counseling services. Homebound is not suitable because it would hinder social development with peers. Private placement is not guaranteed and expenditures too high. Only temporary measures are permitted and contact must be continued between the student and school.[75] Corporal punishment is out of the question or the school district may have to pay damages as in a Vista, California case. A 17-year-old mother approved corporal punishment for her Down's Syndrome child, then later claimed bruises and emotional scars and received $25,000 in an out-of-court settlement.[76]

17. Rural Area School Problems

All aspects of PL 94-142 seem to pose unusual problems for rural schools. Larger school districts are better able to provide all of the special services because of the cost efficiency of large numbers of students. Smaller districts do not have the economics of scale yet they are still mandated to provide the same services.[77] Particularly pressing problems are the following: teacher retention and recruitment, rural terrain, geography and climactic demands of remote, isolated areas, and vast land spaces. In the United States, 67% of all schools are rural, (less than 150 persons/square mile or 60% or more of the population living in communities with no more than 5,000 inhabitants).

In a survey of 80 geographically dispursed rural school districts, 94% reported problems in recruiting qualified staff, 88% resistance to change in tradition, 72% suspicions of outside interference, 83% long distances between schools and services, 55% low tax bases, 61% mountainous

areas, 44% language barriers, 66% icy, muddy roads causing long travel delays, and 50% unconcerned attitudes of the handicapped themselves and their parents. Usually there are insufficient numbers of handicapped children to justify a full time educational staff and consultants. Ninety-four per cent of the staffs reported social isolation, low salaries, and inadequate housing complaints, resulting in a 30-50% annual turnover and a complete turnover every 3 years.[78] Some teachers served as resources to one or more districts spread over 24,000 square miles and had no full-time special education director able to affect special education staffs who were responsible only to a co-op, not the school district. Rural districts reported problems with pre-school programs, serving the ages of 16-21 handicapped, and the severely handicapped. They also needed diagnosticians and vocational instructors, and had no grantwriting skills needed because of the low tax base and high incidence of poverty.[79]

18. Rural Area Positive Aspects

On a more optimistic note, several school districts have found high cost efficiency in a centralized program. When the federal government passed PL 94-142, it was aware that many private institutions could supply services to the public schools.[80] Ninety-seven per cent of the rural districts have developed interagency agreements for rural handicapped students providing related and support services. Among 75 school districts in 17 states, 92% was the average increase in the number of handicapped served before and after the implementation of PL 94-142. Even though there were major hindering factors, PL 94-142 clearly initiated efforts toward all services for rural handicapped students. Four times the number of unidentified, unserved students now served live in rural areas than in the country in general.[81] This is indicated in the following chart:

DISABILITY	BEFORE PL 94-142	AFTER
Educable Mentally Retarded	57%	72%
Trainable Mentally Retarded	59%	77%
Speech Impaired	37%	61%
Learning Disabled	27%	79%
Emotionally Disturbed	09%	52%
Orthopedically Handicapped	07%	47%

Mainstreaming has increased by 86%, diagnostic and evaluative services by 85%, related services of physical therapy and occupational therapy 950% and 531% respectively.[82] Given the relatively few federal monies and only slight experience in serving the handicapped, performance improvements in rural special education have been phenomenal.[83]

19. Financial Impact of PL 94-142

But of all the problematic areas resulting from PL 94-142, none has been as marked as the financial implications. It has already been noted that no state can deny a handicapped child an education based on the excuse of insufficient funds. The law describes the specific processes in which the federal government has regulatory power over the states. It was designed as an excess-cost formula and was never intended to fully fund the special education program across the nation. Its supposed intention was to encourage states to provide equal education for the handicapped and stimulate the allocation of state funds.[84] A generation ago, aid to special education was $200 million, 3% coming from local districts. In 1975, aid to special education was $21 billion, and since 1975, the increase in state funding for special education averaged 14.3% annually. Enrollments rose from 3.4 million in 1976 to 318 million in 1979-80.[85] The average cost of educating a handicapped child is at least twice that of a regular student, primarily because of related services, low teacher-pupil ratios, special materials and equipment, and transportation. The National School Board Association estimates the cost to U.S. schools in removal of archetectual barriers alone is

$1,500,000,000. Students in grades K-12 served by special education cost an estimated $6,272 million.[86] In Pennsylvania the children went from 169,875 in 1972-73 to 240,000 in 1979-80, and the cost from $211 million to $473 million.[87] In 1980, costs increased 4,000 times and local districts could get federal money only with massive federal control. Districts faced the dilema of either providing education or lose federal monies already used for existing programs.[88] Local agencies must submit plans for application for funds which must include details of how the district will fufill the requirements of the state plan.

PL 94-142 does not just give federal money to states and local school districts on the condition they use federal money in specific ways. It makes the receipt of federal funds dependent on the willingness of states and school districts to use their own money in ways that are acceptable to Congress. In Pennslyvania, the local school districts contribute to the cost of educating a handicapped child the average amount it spends on a child generally, and the cost above this comes from the state. There is no incentive on the part of the local districts to keep costs down. In Massachusetts, special needs children went from 68,160 in 1972-73 to 160,599 in 1979-80 and costs rose from $104.7 million to $310.8 million. Money for this was skimmed off the top of the general school subsidy with the result that Massachusetts had the highest property taxes in the nation.[89] The Educational Priorities Panel, a coalition of 25 parent and civic groups published documents with special education findings from 11 large cities concerning the impact of PL 94-142. In New York City because of state-mandated small class size and federally mandated related services, it cost three times as much to educate a handicapped child ($6,141) than a non-

handicapped child ($2,896) in 1980. There has been an 80% increase in the tax levy for special education since 1975. The federal government authorizes reimbursement to each state a percentage over national expenditures per public school child for each handicapped child served. This penalizes high cost regions because the national average expenditures would be below some areas.

In 1980, the estimated Office of Education cost of educating a handicapped child was $2,800, yet the 11-city average was $3,287. There is inequity also in the inadequate appropriation levels and the law has resulted in a competition for funds between the handicapped and the non-handicapped. Even though 11 cities reported an average 15% enrollment decline, expenditures were up 5.7% and as much as 44.8% in Los Angeles. Cost increases for educating the handicapped were up 63.5%. In 3 of 4 largest cities surveyed, increase in special education spending went from 44.3% to 99.1%.[90]

Costs for educating the handicapped range from the quantitative to the qualitative. Quantitative means that it is the responsibility of the school district to find every handicapped child and pay for his educational services. Qualitative costs concern the upgrading in the form and variety of services afforded the handicapped. This is indicated by the IEP which describes the range and intensity of special services required in the most appropriate environment rather than administrational convenience.[91]

20. Financial Burdern of Individual Education Plan

The IEP conference alone requires services from 1 psychologist, 1 support service person, 1 administrator, 1 sending teacher, and 1 receiving teacher. Based on the average teacher's salary of $14,224, it

requires $193 for staff salary and 1/2 days of time per professional. Costs for all IEP conferences in the fall of 1977 were estimated to be $1,292,907,000. The second conference requiring two professionals was estimated at $515,823,000. In 1977-78 the total cost for all IEP conferences would have been $1,808,730,000.[92]

21. Government Fails to Back its Law

The financial crisis initiated by PL 94-142 has placed many school districts at the point of fiscal disaster. We have the federal government dictating to local schools exactly what to do with their own handicapped , deciding how much local money to spend, and determining the circumstances by which the federal government oversees compliance, yet, actual statistics show that the government is not financially supportive of its mandates as indicated in the following table:[93]

FISCAL YEAR APPROPRIATIONS	USE BY SCHOOLS	CONGRESS APPROPRIATED	AUTHORIZED CONTRIBUTION	ACTUAL CONTRIBUTION
1977	1977-78	$252 Million	5%	5%
1978	1978-79	566	10%	10%
1979	1979-80	804	20%	12%
1980	1980-81	874.5	20%	12%
1981	1981-82		40%	12%

The amounts authorized by Congress were obviously not appropriated. Even the small sums which were appropriated have been reduced substantially. So, local districts must pay for education services chosen and determined by the Department of Education.[94] An unfortunate side effect of this financial squeeze has been to mislabel a student as handicapped in order to get more funds, or to mislabel a handicapped child as less severe to avoid liability of providing extensive special education services.[95]

The sponsors of the act determined that the federal portion of the costs would go from 5% in 1978 to 40% in 1982. But, at best, Washington

ended up defraying not more than 15%, and far less actually. From 1972-72 to 1979-80, cost increases totaled $5 billion and the federal government didn't even come close to being supportive. In fact, only in the first two years did Congress live up to its promise. The actual federal share in 1981 was a mere 6% and in 1982 it fell below 5%. The results of this are sharp rises in property taxes and counter-measures such as Proposition 13 in California. School tax levies will continue to be defeated and there will be cutbacks in programs for non-handicapped children.[96] Since PL 94-142 became effective in fiscal year 1978 it has cost state and local school boards $600 million in 1979 and $1 billion in 1980, because Congress had appropriated funds for only 12% instead of 38% called for by the Act. New York City lost $20 million in 1981. It was to have been the responsibility of all levels of government to share the costs resultant from PL 94-142, unfortunately, the federal government did not fufill its financial commitment and local and state school districts were faced with the payments. In 1981, $2.12 billion was to have been authorized for PL 94-142, but the actual funding was $862 million, a dramatic short fall from what was due the states. They received $1.2 billion less than they were authorized, losing $327,55 per pupil. New York lost $65 million.[97]

22. Recommendations for Easing the Financial Burden

To alleviate the plight of the state and local school districts because of PL 94-142, it is recommended that the government fund its law to the authorized level. PL 89-313 allocates funds to state supported private schools and state operated schools for educating handicapped children. If a child transfers to public schools and had been using these funds, he still remains eligible to receive them ($731/child).[98]

Handicapped children are also eligible for medicaid if medical problems are found. The local district would pay 25%, the state 25%, and the federal government 50% which would be a considerable savings used for additional related services. However, these children can't be identified without their parent's consent because of the confidentiality rights with Medicaid.[99] By providing a centralized delivery program the larger school districts would be able to maintain a reasonable level of expenditures on specific types of special education. The costs would be lower and quality higher.[100]

Congress could eliminate the section of the statute prescribing the form and content of the IEP because it has contributed most to the bureaucratization of the schools, and instead rely more on the leadership of good teachers and principals. President Reagan recommended that the fundings for PL 94-142 be absorbed into block grants from the states, but the Committee on Human Services scuttled the idea and included the Act among the programs funded from block grants to the states. Noone anticipates that Congress will be willing to extend the Act for five more years at the present level.

The middle-of-the-road solution is to accept the inevitable decline of federal support so the burdens should be limited which the law imposes on state and local systems.[101]

There is also the serious danger that the courts will define "appropriate" to mean "optimal". Such a ruling is clearly not required by the equal protection clause and puts the handicapped child in a preferred position. An example of such a problem is the case of the 3-year-old psychotic child with irreversible organic brain syndrome, incurable, who requires 24-hour-a-day care for extreme hyperactivity, is severely mentally

retarded, having to be educated in the "least restrictive environment" which costs a New Jersey county of 40,000, $60,000 per year. This represents $1,500 per year for each citizen of the county and will total over $1 million by the time the child is 21. The issue is that we are making the heaviest per capita educational investment for those least able to contribute to society and with no probability of them being anything but state wards. Congress refuses to confront these facts because politicians don't want to be associated with opposition to aiding the handicapped. No other class of children has the legal right to an "ideal" or "optimal" education. A compromise would be to define "appropriate" more narrowly and accept any educational plan which is adequate, but yet not clearly "appropriate."[102]

Congress could also indicate that independent evaluation would not be at public expense and could require informal mediation before a full due process hearing. Failure to carry out an IEP should carry no personal liability. Appeals should be limited to state or federal courts and they should pay more attention to the decision of the hearing officer and state departments of education.

A solution recommended by the Council of Chief State School Officers is to make a distinction between severe and less severe handicapped and the latter be exempted from PL 94-142, and treated with funding for disadvantaged children under Title I of the Elementary and Secondary Education Act. It could also be stipulated that mandates of the Act would not take effect until appropriations reached 20% of the total current cost of educating the handicapped.

All of the above suggestions, though sensible, are unlikely to

be enacted. It would take an entire session of Congress for the thoughtful rewriting of the law. It is more likely Congress will continue to cut funding for the Act but leave mandates as they are, resulting in clear losses for the states and local schools.[103]

23. Conclusion

The opinion has been stated that since four million handicapped children are in school, and things seem to be going fairly well for 90% of them, PL 94-142 is the most successful education legislation in history.[104] Yet, special education remains controversial and legally explosive in a harmful combination of court involvement and parental activity. The public notion of education for all at any cost has high priorities at the federal, state and local levels.[105] Congress seems to support it, but mainstreaming has never been justified by research. Public confidence is being eroded by the fact that school gross expenditures have increased by 83% (special education costs are up 160%) yet, all of the increases of monies have had no impact on student performance on standardized tests. Some handicapped children are not educable and we don't understand many handicapped conditions to be able to tell which students will and which will not benefit.[106]

It is our civic responsibility to help parents of the handicapped bear the burden of rearing their children, and we should support their struggle to remove the stigma placed on their children. However, this law far exceeds what it should have legally done because it raised the broader issues of economics, constitutionality, politics, morals, and philosophical issues never fully understood when Congress enacted it.[107] The hope that legislators had for employing the handicapped after school may prove to be disappointing in an economy that can't provide jobs for

some 11 1/2 million Americans let alone absorb 275,000 handicapped teenagers. It might do well for the National Institute of Education to take over the task of evaluating PL 94-142. It doesn't seem to be a prudent policy to allow the Office of Special Education to function as both the advocate and judge of the law.[108]

PL 94-142 seems to threaten the education of an entire generation of handicapped youth and squanders the limited educational funds available in our country for both disabled and regular students. At a deeper level, it raises Constitutional, economic and moral issues at the heart of this nation currently and in the future. At a more practical level it jeopardizes realistic efforts at serving the disabled by legislating the impossible and indiscriminately wasting fiscal resources.[109]

FOOTNOTES

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31. John C. Pittenger and Peter Kuriloff, "Educating the Handicapped: Reforming a Radical Law," Public Interest, Summer 1980, p. 88.

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